

**A BRIEF GUIDE TO LEGISLATION
FOR MEMBERS AND OFFICERS OF THE
GEORGIA GENERAL ASSEMBLY**



OFFICE OF LEGISLATIVE COUNSEL

**OFFICE OF LEGISLATIVE COUNSEL
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DEDICATION

This brief guide is dedicated to Professor Emeritus R. Perry Sentell, Jr., of the School of Law at the University of Georgia. During his 46 years of teaching and service to the University (1958-2004), he inspired legions of future lawyers--many of whom subsequently served in the Office of Legislative Counsel, the Georgia General Assembly, or both--who have long looked to him for guidance on the law of legislative government. A prolific scholar, oft-cited authority, and award-winning teacher, he relentlessly ingrained the lesson that there is no substitute for intellectual honesty and painstaking preparation in the classroom, courtroom, committee room, or chamber—yet just beneath the surface of his unsparing application of the Socratic method lies the most kind and gracious of souls. He has been deservedly honored by the Georgia House of Representatives, among many others, for his distinguished service to the advancement of legal education.

In his honor and in keeping with his comment about the volumes of the Official Code of Georgia Annotated, the covers of the printed version of this guide are likewise “Red and Black, as God intended.”

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PREFACE

This guide is intended as a quick reference and aid for members and officers of the Georgia General Assembly with regard to: (1) requests for legislation; (2) drafting of legislation; (3) some salient constitutional requirements for legislation; and (4) release of legislation. A guide of this brevity obviously cannot serve as a thorough treatise on the law and its many nuances, and we emphasize that it is neither intended to be nor should it be construed as an opinion by the Office of Legislative Counsel on the constitutionality or merits of any particular bill or resolution. Nonetheless, we hope that the brief general statements contained herein may aid members and officers of the General Assembly in requesting and receiving legislation and alert them to some basic constitutional necessities. For the application of these and other constitutional and statutory requirements to specific legislation, please consult an attorney in the Office of Legislative Counsel.

Office of Legislative Counsel
26 September 2014

PART I

INTRODUCTION

Legislative drafting requires more definite, more exacting qualities of language, and demands greater skill in composition than other writing. . . . Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and consistency of architecture, for it is law architecture.

Charles B. Nutting & Reed Dickerson, *Cases and Materials on Legislation* 667 (5th ed. 1978).

Legislative drafting for the Georgia General Assembly is one of the functions of the Office of Legislative Counsel, which is a joint office of the General Assembly created by statute in 1959. The office serves as legal counsel for the General Assembly and provides services to all members in their official capacities on a nonpartisan, impartial, and confidential basis. Our obligation of maintaining confidentiality arises not only from statute, O.C.G.A. Sec. 50-18-75, but also from the

Rules of Professional Conduct of the State Bar of Georgia.

Primary responsibilities of the office include not only drafting legislation but also counseling legislators and legislative committees and issuing legal opinions to legislators on statutory interpretation and constitutionality. The office also serves as staff for the Georgia Code Revision Commission, which oversees publication of the Official Code of Georgia Annotated. Additionally, the office compiles and annually publishes the Georgia Laws volumes containing the Acts and resolutions of the General Assembly.

PART II

REQUESTS FOR LEGISLATION

This office prepares all legislation for the General Assembly other than the general appropriations bills. (The financial details of a general appropriations bill are prepared by the House Budget and Research Office and the Senate Budget and Evaluation Office, while the legal necessities of the bill title, enacting clause, directory language,

effective date, and repealer clause are drafted by the Office of Legislative Counsel.)

Pursuant to policy adopted by the Legislative Services Committee, as a general proposition the office prepares legislation only at the request and authorization of a member of the General Assembly. *See also* O.C.G.A. Sec. 28-4-3. This is construed to include a member-elect; *i.e.*, a candidate who has won a general election or has won a primary and has no opposition in the general election. The same policy applies to the preparation of a notice of intention to introduce local legislation, since the notice becomes part of the bill. (Similarly, the committee adopted a policy that this office performs Code research "only for bill drafting purposes and in connection with the duties of the office as relates to the Senate and the House of Representatives" and that "no such searches be conducted for outside persons or organizations.")

A member of the General Assembly may submit a request for the preparation of legislation directly (*i.e.*, in person; in writing; or by telephone, fax, or e-mail) or through an employee of the General

Assembly. If the Office of Legislative Counsel receives a request from an employee of the General Assembly (e.g., an administrative assistant, committee secretary or aide, research office staff, leadership staff, etc.), we will assume that the member has authorized the request.

It is also common practice for the members of the legislature to specifically authorize the Office of Legislative Counsel to receive requests on their behalf from other persons, such as officers and employees of the executive branch, etc. This is permissible *so long as the request is authorized by the member*. This authorization may be given directly (i.e., in person; in writing; or by telephone, fax, or e-mail) or through an employee of the legislature. A member may authorize this office to receive such a request on behalf of the member for one particular bill, for a number of specific bills or amendments, or for legislation generally relating to a particular subject or committee. This is permissible so long as the Office of Legislative Counsel attorney is confident that the request is within the scope of authority granted by the member. However, unrestricted *carte blanche*

authorization for such a non-member to submit requests, without any limitation as to a particular bill or subject, is not recognized.

The Lieutenant Governor, as an officer of the General Assembly (*i.e.*, President of the Senate), and his or her staff may request legislation in the same manner as members of the General Assembly.

Typically, with gubernatorial administrations, the Office of Legislative Counsel has been authorized to receive requests for legislation from the Executive Counsel and other staff in the Governor's office. This is based on the understanding that gubernatorial staff has standing authorization in this regard from those General Assembly members serving as the Governor's administration floor leaders in the House and Senate.

Requests are submitted in various forms and with widely varying degrees of specificity. If the request is taken by an attorney during an interview with a member of the General Assembly (which is strongly encouraged), the attorney taking the request has an opportunity to elicit more details at that time. If

the request is not relayed directly to the attorney by the member and details of the request are not clear, the attorney may need to follow up with a meeting, telephone call, or other communication with the member or his or her authorized agent.

PART III

DRAFTING OF LEGISLATION

Our attorneys' objectives are to produce drafts that accomplish what legislators would like to accomplish. The policy choices are for the legislator to decide; but the "how" - the actual drafting so that the law is coherent and "works" - is the drafting attorney's responsibility.

Attorneys in the office are assigned to serve particular standing committees of the House and Senate. With length of service, attorneys build a degree of expertise in the subject matters handled by their assigned committees; hence, the office tends to steer a request for legislation in a particular subject area to an attorney who routinely handles such matters. However, each attorney in the office is expected to be able to draft legislation

on any subject, and members are free to call upon a different attorney if they so desire.

Drafting legislation is not a "push-button" task. The turnaround time for any particular requested legislation will vary, depending upon such factors as the extent and complexity of the issues involved, the research required, the pending workload of the particular attorney who is charged with drafting the requested legislation, and the concurrent workload of the office as a whole (since members of our support staff handle the work of multiple attorneys). During sessions of the General Assembly, due to the heavy and constant stream of client intake during the day, our attorneys frequently are not able to begin sustained drafting until after the office is closed to visitors in the evenings and on weekends. Thus, attorneys, document specialists, editors, and administrative staff of the office work long hours to keep up with the large number of requests. (Typically, 11 staff attorneys and two privileged resolution writers collectively draft approximately 11,000 documents - bills, amendments, and resolutions -- per biennium.)

For the foregoing reasons, submission of drafting requests well in advance of a session is strongly encouraged, whenever possible (especially for extraordinarily complex or lengthy legislation). Although the office remains busy in the interim with the extensive and time-sensitive work required in publication of the Official Code of Georgia Annotated, publication of the Georgia Laws volumes, publication of the Summary of General Statutes Enacted, study committee work, frequent opinion and research requests from members, occasional litigation, and other duties, there is often more ability to devote sustained time to drafting during the day in the interim.

Please note that submission of "pre-drafted" bills prepared by sources outside our office does not necessarily speed up the process, since the work may have been performed by a layperson or by an attorney who does not draft legislation on a full-time basis, and our attorneys must still perform their own professionally required due diligence, which necessitates time for sufficient thought and research. Furthermore, simply handing over a pre-

draft without sufficient accompanying explanation of the intended effect of the legislation may actually hamper the process, because the legislator's actual intent may not be clearly or accurately reflected in the pre-draft submitted, which can lead to unintended consequences.

For purposes of tracking each piece of legislation and various versions of bills, the Office of Legislative Counsel assigns a unique number to each bill, resolution, and amendment drafted. This number is referred to as an "LC number" and consists of a sequence of: a two-letter document type prefix; a two or three-digit drafter number; a four-digit numerical designation; and in certain instances, a suffix code (*e.g.* "LC 79 3001," "AM 79 1501," and "LC 79 2501S"). The document type prefix is either "LC" for bills and resolutions or "AM" for amendments. The drafter number ("79" in the hypothetical examples above) is the unique number assigned to the drafter who prepared the particular piece of legislation. The four-digit numerical designation is the sequential numbering of "LC" or "AM" documents for the particular drafter.

As attorneys and members of the State Bar of Georgia, under Georgia Rule of Professional Conduct 2.1 we are professionally obligated to advise the requesting legislator of any apparent constitutional or other problems with the requested legislation. Such advice is normally written, unless circumstances are so urgent that only oral advice is suitable. "Counsel has a duty to investigate and to provide informed legal advice to the client and 'first must evaluate potential avenues and advise the client of those offering possible merit.' ... However, after having been informed, the [client], and not his attorney, makes the ultimate decision...." *Morrison v. State*, 258 Ga. 683, 686 (1988).

Some frequently encountered constitutional questions regarding requests for legislation are addressed in Part IV below.

PART IV

CONSTITUTIONAL REQUIREMENTS FOR LEGISLATION

The basic principle of our State system of legislation is stated in Article III, Section VI, Paragraph I of the Georgia Constitution of 1983, which provides that "[t]he General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state." This means that constitutional provisions, whether in the State or federal Constitution, are the only restrictions or limitations on the General Assembly's legislative powers. (This is different from the powers of the federal Congress, in that Congress has no powers other than those which are specifically or by necessary implication conferred by the federal Constitution).

Thus, the first issue confronting both a legislator proposing legislation and the Office of Legislative Counsel in responding to a request for legislation is whether or not the proposal is repugnant to any

part of either the federal or State Constitution. Some of the constitutional requirements which frequently give rise to issues or questions in the preparation of legislation are, briefly and generally, as follows:

1. **The Supremacy Clause.** The United States Constitution "and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Article VI, Clause II. Under this "Supremacy Clause," federal law can preempt state law either expressly, by a pervasive scheme which occupies the field, or by conflict. A state cannot "interpose" itself against, or "nullify," federal law. *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Bush v. Orleans Parish School Bd.*, 188 F. Supp. 916 (E.D. La. 1960), *aff'd* 364 U.S. 500 (1960).

2. **Abridgement of powers.** "The General Assembly shall not abridge its powers under [the Georgia] Constitution. No law enacted by the General Assembly shall be construed to limit its powers." Ga. Const. art. III, sec. VI, par. III. Thus, one General Assembly cannot by statute bind a successor General Assembly in the exercise of its powers, unless otherwise provided by the Constitution.

3. **Delegation of legislative power.** In accordance with its vested legislative power, Ga. Const. art. III, sec. I, par. I, and the required separation of powers, *id.* art. I, sec. II, par. III, the General Assembly shall not delegate its legislative power to another entity, public or private; but the legislature may statutorily confer *ministerial* power upon a state agency to adopt rules and regulations to implement a statute if the law provides sufficient guidelines for the agency's exercise of that ministerial power. *Dept. of Transportation v. Atlanta*, 260 Ga. 699, 703 (1990) (authorizing delegation of administrative power to state agency within sufficient guidelines); *Rogers v. Medical Ass'n of Ga.*, 244 Ga. 151, 153-154 (1979) (prohibiting

delegating to a private organization the power to appoint a public official). The General Assembly cannot delegate to a state agency the power to declare what shall or shall not be a criminal offense. *Sundberg v. State*, 234 Ga. 482, 483 (1975).

4. **Multiple subject matters; bill titles.**

"No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof." Ga. Const. art. III, sec. V, par. III. The two prongs of this constitutional provision are mandatory, not merely directory, and have constituted the basis of numerous challenges to legislation. The prohibition against multiple subject matters is designed to prevent legislative "logrolling." If the provisions of a bill contain a logical and natural connection developing a single objective, the bill does not violate the multiple subject matter prohibition. *Wall v. Board of Elections*, 242 Ga. 566 (1978); *Lutz v. Foran*, 262 Ga. 819 (1993). The requirement for expressing a bill's matter in the title is designed to prevent surprise or fraud, and was instituted in response to the fraud perpetrated by the infamous Yazoo Act. **(Special note on germaneness:** Under

House and Senate rules, amendments to bills must be germane; i.e., they must relate directly to the matter under consideration. Determination of the germaneness of an offered amendment is according to the judgment of the presiding officer. The standards applied in determining germaneness are not the legal standards an attorney uses in responding to constitutional questions of multiple subject matters. The question of germaneness is one of procedure rather than of law and is necessarily subjective to a certain degree. Therefore, if questioned, the Office of Legislative Counsel confines its response to a discussion of the legal issue of multiple subject matters in a bill and emphasizes that germaneness of an amendment to a bill is a procedural issue determined by the presiding officer of the House of Representatives or the Senate.)

5. **Method of amending or repealing laws.** "No law or section of the Code shall be amended or repealed by mere reference to its title or to the number of the section of the Code; but the amending or repealing Act shall distinctly describe the law or Code section to be amended or

repealed as well as the alteration to be made." Ga. Const. art. III, sec V, par. IV. This requirement is met by the standard form and style in which bills are drafted by the Office of Legislative Counsel.

6. **Uniform operation of general law.**

"Laws of a general nature shall have uniform operation throughout this state...." Ga. Const. art. III, sec. VI, par. IV(a). This prevents carving out general law exceptions aimed at particular local jurisdictions.

7. **Revenue bills; appropriations bills;**

origin. "All bills for raising revenue, or appropriating money, shall originate in the House of Representatives." Ga. Const. art. III, sec. V, par. II. As a practical matter, the House may decline to take up a Senate bill which has been transmitted to the House and which the House considers to be a bill to raise revenue or appropriate money.

8. **General appropriations bill.**

The general appropriations bill provides for "the ordinary expenses of the executive, legislative, and judicial departments of the government; payment

of the public debt and interest thereon; and for support of the public institutions and educational interests of the state. All other appropriations shall be made by separate bills, each embracing but one subject." Ga. Const. art. III, sec. IX, par. III. A general appropriations bill for the upcoming fiscal year is the one bill which the Constitution requires the General Assembly to pass each year. *Id.* art. III, sec. IX, par. II(b). A general appropriations bill cannot contain anything other than appropriations; *e.g.*, a general appropriations bill cannot contain substantive law authorizing agencies to take actions not already permitted by general law and cannot alter agency powers derived from general law. 1991 Op. Att'y Gen. 91-26.

9. **Dedication of state revenue.**

Unless constitutional authority can be found which justifies retention of funds by a state department, agency, or special fund, all incoming state revenue from taxes, fees, or assessments collected pursuant to specific statutory command or authorization is to be placed in the general treasury. 1977 Op. Att'y Gen. No. 77-77; Ga. Const. art. III, sec. IX, par. VI (a); *id.* Art. VII, sec. III, par. II.

10. **Gratuities.** Generally, the Constitution prohibits the General Assembly from granting "any donation or gratuity." Ga. Const. art. III, sec. VI, par. VI(a). There are some specific exceptions; *e.g.*, grants and scholarships to students, *id.* art. VIII, sec. VII, par. I. The Constitution similarly prohibits the General Assembly from granting or authorizing "extra compensation to any public officer, agent, or contractor after the service has been rendered or the contract entered into." *Id.* art. III, sec. VII, par. VI (a).

11. **Retroactive laws; ex post facto laws; laws impairing existing contracts.** "No ... ex post facto law, retroactive law, or laws impairing the obligation of contract ... shall be passed." Ga. Const. art. I, sec. I, par. X. Simply put, this provision prohibits enactment of laws that "reach back" and punish conduct which was not criminal at the time it was committed or impair vested rights under contracts already entered into prior to the effective date of the legislation. *See, e.g., Fletcher v. Peck*, 10

U.S. 87 (1810) (law impairing rights vested under an existing contract is void).

12. **Bills of attainder.** "No bill of attainder...shall be passed." Ga. Const. art. I, sec. I, par. X. The United States Constitution also prohibits Congress and the states from passing bills of attainder. U.S. Const. art. I, sec. IX; art. I, sec. X. Prohibited as bills of attainder are "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." *United States v. Lovett*, 328 U.S. 303, 315-316 (1946).

13. **Local and special laws.** "[N]o local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws." Ga. Const. art. III, sec. VI, par. IV(a). Persons contemplating local legislation should read carefully O.C.G.A. Sec. 28-1-

14 concerning the advertisement and notice requirements for local bills. *See* Ga. Const. art. III, sec. V, par. IX.

14. **Home rule powers.** County and municipal governments are provided by the Constitution and general law with certain "home rule" powers, and the General Assembly faces certain limitations on the extent and manner of restricting such powers. Ga. Const. art. IX, sec. II; O.C.G.A. Sec. 36-35-1 *et seq.*

15. **New population bills.** Generally, except for state-wide minimum salary bills for county officers, new legislation (since 1997) made applicable to particular counties or municipalities based upon population classifications and which relate to public officials' salaries or to "the property, affairs, or operation of the governing authority of a county or municipality, including, but not limited to, any matters pertaining to municipal annexation, deannexation, incorporation, or dissolution" is prohibited. O.C.G.A. Sec. 28-1-15(c.1); *see also* Ga. Const. art. III, sec. VI, par. IV(b).

Population Acts enacted prior to 1997 remain in effect until repealed.

* * * * *

The above paragraphs present in general, summary form some of the frequently faced constitutional requirements for legislation. They are not intended to be the final word on legislation, and by no means do they address all constitutional questions. The volume and corresponding supplement of the O.C.G.A. containing the text of the Georgia Constitution of 1983 and case annotations thereto contains approximately 1,600 pages; there are additional requirements and some exceptions within the text of the Constitution itself, and there are many nuances provided by thousands of court decisions interpreting the Constitution, which require much study and interpretation. With regard to any specific legislation or proposed legislation, "the devil is always in the details." Again, for the application of constitutional and statutory requirements to specific legislation, please consult an attorney in the Office of Legislative Counsel.

PART V

RELEASE OF LEGISLATION

As stated before, communications between the Office of Legislative Counsel and members of the General Assembly and persons acting on their behalf are confidential (except in circumstances where such confidentiality has been waived by the member). This confidentiality extends to attorney work product such as bills and amendments which have been prepared by the Office of Legislative Counsel. We cannot discuss or even acknowledge one member's bill request with another member unless the first member has given us express authorization. Once a bill is introduced or otherwise publicly released by the requesting legislator, the bill text becomes public; however, ALL communications and background work product relating to such document remain confidential.

The official originals (identified by red "O1" and "O2" stamp marks) of a completed bill or amendment are placed in the requesting legislator's file in the reception area of the Office of Legislative Counsel (unless that requesting legislator has

specifically instructed us to place those originals in another legislator's file). Legislation will be released from a legislator's file in this office only to the legislator and other persons specifically authorized in writing by the legislator. It is standard practice for a legislator to send a signed form letter of standing authorization for an administrative assistant or committee aide to pick up legislation from the legislator's file, and a letter of this nature will be placed in the legislator's file.

Copies of a bill or amendment which has not yet been introduced or otherwise publicly released (*e.g.*, by distribution at a committee meeting) can be released by the Office of Legislative Counsel only with specific authorization by the legislator who requested such legislation. (This includes a substitute or amendment prepared at the request of a legislator for use by a committee; it cannot be placed in the committee chair's file without express authorization from the legislator who requested preparation of the substitute or amendment, and failure by a legislator to provide such authorization can cause delay for committee chairs or committee staff who need to pick up documents in advance of

committee meetings.) A legislator's authorization to release originals or copies may be given directly (in person; in writing; or by telephone, fax, or e-mail) or through an employee of the legislature *if* that legislative employee has been listed in the letter of standing authorization to access the legislator's file. *Unlike requests for legislation (where legislative employees are presumed authorized), it is not assumed that legislative employees in general may obtain bills and amendments from a legislator's file in this office.*

A member of the General Assembly *may* combine an authorization to request a bill and an authorization to receive a copy of the bill, *e.g.*, "Please let department commissioner John Smith get a bill on phone tariffs drafted for me and give him a copy when it's finished." However, the mere authorization for a third party to *request* a bill *does not* automatically carry with it an authorization to *receive a copy*.

The Office of Legislative Counsel must be sure that we are acting within the scope of the legislator's authorization. If we are in doubt, it is better for all

concerned for us to err on the side of caution by requesting further instructions from the legislator before preparing legislation or releasing originals or copies of the legislation.

Finally, when a House or Senate member has obtained and is ready to introduce the official originals of a bill, the bill "backs" should be signed by the sponsor (and co-sponsors, if any), and the O1 and O2 originals should be filed with the Clerk of the House of Representatives (if it is a House bill) or the Secretary of the Senate (if it is a Senate bill). It is crucial that the pages of the originals to be filed should not be marked upon or otherwise defaced.

PART VI

CONCLUSION

Our goal is always to provide quality legal services to the General Assembly and its members. Serving as legal counsel and staff to those elected to represent Georgia in the legislature is a privilege, an honor, and a high obligation, none of which is ever taken lightly:

Probably the greatest compliment a lawyer can receive from his [or her] profession (a compliment never publicized) is an assignment to draft a major law.

Martin Mayer, *The Lawyers* 50-51 (1957).

APPENDIX

RECOMMENDED READING

Carl Vinson Institute of Government, *Handbook for Georgia Legislators* (14th ed. 2014)

Frank H. Edwards, *The Office of Legislative Counsel*, 23 Ga. St. B.J., No. 3, 114 (Feb. 1987)

Terry A. McKenzie, *The Making of a New Code: The Official Code of Georgia Annotated: Recodification in Georgia*, 16 Ga. St. B.J., No. 3, 102 (Feb. 1982)

Rules of the House of Representatives

Rules of the Senate

NOTES

